

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

INTEL CORPORATION,

Opposer,

v.

JACQUELINE HALLIDAY DIAZ,

Applicant.

**NOTICE OF MOTION AND MOTION TO
COMPEL RESPONSES TO INTEL
CORPORATION'S FIRST AND SECOND
SETS OF INTERROGATORIES, FIRST AND
SECOND SETS OF REQUESTS FOR
PRODUCTION AND INSPECTION OF
DOCUMENTS AND THINGS, AND SECOND
SET OF REQUESTS FOR ADMISSIONS, AND
TO SUSPEND PROCEEDING**

Opposition No.: 124,223

Serial No.: 76/135,006

Published: August 28, 2001

Opposed Mark: SURPRISE INSIDE



03-03-2004

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #22

TO JACQUELINE HALLIDAY DIAZ:

Please take notice that Opposer Intel Corporation hereby moves the Trademark Trial and Appeal Board for an order compelling the Applicant Jacqueline Halliday Diaz to provide complete and proper responses to Opposer's First and Second Sets of Interrogatories, First and Second Sets of Requests for Production and Inspection of Documents and Things, Second Set of Requests for Admissions, and to suspend this proceeding.

This motion will be based on this Notice of Motion and Motion, the Memorandum of Points and Authorities filed herewith and the declaration of Bobby A. Ghajar and all evidence presented.

Respectfully submitted,

INTEL CORPORATION

Date: March 3, 2004

By: 

Katherine M. Basile

Bobby A. Ghajar

HOWREY SIMON ARNOLD & WHITE, LLP

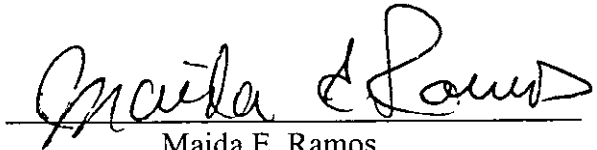
301 Ravenswood Ave., Menlo Park, CA 94025

(650) 463-8100

ATTORNEYS FOR OPPOSER

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Notice of Motion and Motion to Compel Responses to Intel Corporation's First and Second Sets of Interrogatories, First and Second Sets of Requests for Production and Inspection of Documents and Things, and Second Set of Requests for Admission, and to Suspend Proceeding was served on Counsel for Applicant, Neal O. Willmann, Esq., 9521 Montgomery Road, Cincinnati, OH 45242 on this 3rd day of March, 2004

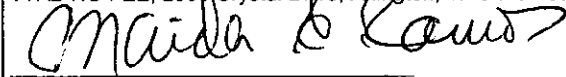

Maida E. Ramos

CERTIFICATE OF EXPRESS MAIL

NUMBER : EE358074901US

DATE OF DEPOSIT: March 3, 2004

I hereby certify that this paper or fee is being deposited with the United States Postal Service "EXPRESS MAIL POST OFFICE TO ADDRESSEE" service under 37 C.F.R. 1.40 on the date indicated above and is addressed to: Commissioner for Trademarks, Box TTAB NO FEE, 2900 Crystal Drive, Arlington, VA 22202-3513.



Maida E. Ramos

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

INTEL CORPORATION,

Opposer,

vs.

Jacqueline Halliday Diaz,

Applicant.



03-03-2004

U.S. Patent & TMO/c/TM Mail Rpt Dt. #22

) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES IN SUPPORT OF MOTION**
) **TO COMPEL RESPONSES TO INTEL**
) **CORPORATION'S FIRST AND SECOND**
) **SETS OF INTERROGATORIES, FIRST**
) **AND SECOND SETS OF REQUESTS FOR**
) **PRODUCTION AND INSPECTION OF**
) **DOCUMENTS AND THINGS, SECOND SET**
) **OF REQUESTS FOR ADMISSIONS, AND**
) **TO SUSPEND PROCEEDING**

) Opposition No. 91124223

) Serial No.: 76/135,006

) Published: August 28, 2001

) Opposed Mark: SURPRISE INSIDE

INTRODUCTION

Opposer Intel Corporation ("Intel") hereby moves to compel Applicant, Ms. Jacqueline Halliday Diaz ("Applicant") to provide sufficient responses to Intel's discovery requests, specifically, responses to Intel's First Set of Interrogatories Nos. 1 through 22, Intel's Second Set of Interrogatories Nos. 1 through 11, Intel's First Set of Requests for Production and Inspection of Documents Nos. 1 through 20, Intel's Second Set of Requests for Production and Inspection of Documents Nos. 1 through 4, and Intel's Second Set of Requests for Admissions Nos. 1 through 2.

Applicant's avoidance of its discovery obligations in this Opposition has been egregious and systematic. For example, after two years, Intel has yet to receive a single document responsive to its First and Second Sets of Document Requests. Applicant's disregard and delay serve only to frustrate the Opposition process, delay resolution of this proceeding, and prejudice Intel's ability to take discovery and conduct depositions. Intel now seeks the Board's intervention to compel Applicant to provide sufficient and complete responses to Intel's discovery.

FACTUAL BACKGROUND

This Opposition was filed on September 26, 2001. (*See* Declaration of Ghajar, filed herewith, at ¶2). Intel's discovery is germane to this proceeding, focusing for example on Applicant's On February 21, 2002 Intel served its First Sets of Interrogatories Nos. 1 through 22, and Requests for Production of Documents and Things Nos. 1 through 20 on Applicant's counsel. (*See id.*, Exs. A and B). Intel's discovery is germane to this proceeding, focusing for example on Applicant's proposed mark, its creation and use, and Applicant's knowledge of Intel's mark Applicant responded, however, with insufficient and incomplete responses to the Interrogatories (*Id.* at ¶3, Ex. C) and written responses to the Document Requests, but did not produce any documents. (*Id.* at ¶4, Ex. D).

On May 20, 2002, Intel served Applicant with Intel's Second Set of Interrogatories, Requests for Admissions, and Requests for Production of Documents and Things. (*Id.* at ¶5, Exs. E-G). Applicant, however, did not respond or serve objections to any of Intel's Second Set of discovery requests. (*Id.* at ¶5). Indeed, to this day, despite multiple reminders and good faith attempts to meet and confer, Applicant still has not produced a single responsive document or provided *any* response or objection to Intel's Second Set of discovery requests. (*Id.* at ¶7)

Intel has diligently sought to resolve all discovery issues with Applicant. Despite Intel's efforts, Applicant has refused to respond to Intel's Second Set of discovery at all,¹ and has refused to produce any documents responsive to Intel's First Set of discovery or to provide sufficient and complete answers to Intel's First Set of Discovery. (*Id.* at ¶¶6-7). The discovery sought by Intel is germane and relevant to this proceeding, and Applicant's refusal to respond is causing prejudice to Intel.

Pursuant to Fed. R. Civ. P. 37(a), Intel respectfully requests that this Honorable Board issue an order directing Applicant to fully and properly answer Intel's First and Second Sets of Interrogatories, and to produce documents responsive to Intel's First and Second Sets of Requests for Production of Documents and Things within thirty (30) days of the Board's order. Given Applicant's disregard and failure to serve any responses to Intel's Second Sets of discovery

¹ Applicant failed to object to or to respond to Intel's Second Set of Requests for Admissions. As a result, those Requests for Admission should be deemed admitted.

requests, Intel further moves the Board to rule that Applicant waived any objections to Intel's Second Set of discovery requests and, moreover, that Intel's Second Set of Requests for Admissions are deemed admitted by Applicant.

To avoid further prejudice to Intel, it is also requested that the Board suspend the current proceeding pending the disposition of this motion, and reset the discovery and testimony dates thereafter to allow Intel to conduct meaningful depositions and to take follow-up discovery.

ARGUMENT

I. Legal Standard on a Motion to Compel

A motion to compel discovery is available for the failure to provide proper responses to requested discovery with respect to, among other things, interrogatories and requests for production of documents:

In inter partes proceedings before the Board, the motion to compel discovery procedure is available, for a failure to provide requested discovery, with respect to discovery deposition, interrogatories, and requests for production of documents and things.

37 C.F.R. 2.120(e); TBMP §523.01; Fed. R. Civ. P. 37(a). Complete and proper responses are due within 30 days of the date of service. 37 C.F.R. 2.120(a).

The applicant must provide proper responses to interrogatories and documents requests. Pursuant to TBMP §407.02 and Fed. R. Civ. P. 33(b):

A party upon which interrogatories have been served should respond to them by stating, with respect to each interrogatory, either an answer or an objection. If an interrogatory is answered, the answer must be made separately and fully, in writing, under oath. If an interrogatory is objected to, the reason for the objection must be stated in lieu of an answer.

TBMP §477.02. Pursuant to TBMP §409.02 and Fed. R. Civ. P. 34(b):

A response to a request for production of documents and things must state, with respect to each item or category of documents or things requested to be produced, that inspection and related activities will be permitted as requested, unless the request is objected to, in which case the reasons for objection must be stated.

If objection is made to only a part of an item or category, that part must be specified.

TBMP §409.02.

Applicant has disregarded the obligations imposed by the Rules.

II. Applicant has Failed to Provide Proper Responses to Intel's First Set of Interrogatories

Several of Applicant's responses to Intel's First Set of Interrogatories are inadequate.

Specifically:

INTERROGATORY NO. 8:

For each of Applicant's goods and services branded under or used in connection with the term SURPRISE INSIDE, state, for each year from the date of Applicant's alleged first use in any manner to the present year, the (a) total sales (by units and dollars), (b) total quantity of product (in units and dollars) ordered but not yet shipped, (c) gross and net profits or margins on sales, (d) cost of goods sold, including manufacturing and shipping costs, (e) sales, advertising and marketing expenses, and (f) channels of distribution for goods and services ,and identify documents relating thereto and identify Persons knowledgeable thereof.

RESPONSE TO INTERROGATORY NO. 8:

Objection. An answer to this Interrogatory is not likely to lead to relevant information regarding the Opposition currently being conducted.

Applicant's commercial sales, quantity of products sold, profits, sales and marketing expenses, and channels of distribution are each relevant to the issues of infringement. Intel is entitled to know the extent, if any, of Applicant's commercial use and gain from the SURPRISE INSIDE mark, to whom and through which channels Applicant distributes her products, and her marketing and advertising efforts. Applicant's own conclusion and refusal to answer this Interrogatory because it is "irrelevant" is unfounded.

INTERROGATORY NO. 11:

Identify all advertising and promotional information and materials relating to the term SURPRISE INSIDE including, but not limited to, information and material from any trade show or exhibit, print or electronic publications, radio or television stations, Internet web site or portal, direct mailing list, or other medium in which the advertisement or promotion appeared, and identify all persons knowledgeable of that advertising and promotional information and materials.

RESPONSE TO INTERROGATORY NO. 11:

Objection. The question is vague, burdensome and overly broad; and, without waiver of the objection, Applicant identifies QVC as a cable television channel which promoted the sale of her cookwares.

Intel is entitled to receive Applicant's marketing and advertising (promotional literature) related to the SURPRISE INSIDE mark to see whether and how the alleged mark is used on products.

INTERROGATORY NO. 16:

Identify all communications, documents and other facts which evidence, support, or otherwise relate to your contentions that Applicant's mark SURPRISE INSIDE, when used in connection with the goods with which the mark is used, is not likely to cause confusion, mistake, or deception in the trade, or dilution, with Intel's INTEL INSIDE Marks or the marks THE COMPUTER INSIDE or THE JOURNEY INSIDE upon which Intel premises its Notice of Opposition.

RESPONSE TO INTERROGATORY NO. 16:

In casual conversation with a host of colleagues and contemporaries, Applicant's mere mention of the fact that her application for registration is being opposed by Intel elicits exclamations and grimaces of disbelief accompanied by gratuitous comments of "how can they (Intel) be so predatory and arrogant?" and isn't it illegal to usurp the word 'inside' from the English language?"

Intel is entitled to communications or the identification of documents that allegedly support Applicant's position that her SURPRISE INSIDE mark does not cause confusion, mistake, or deception in the trade, or trademark dilution. Applicant's response that unidentified "colleagues and contemporaries" have offered uninformed commentary on Intel's rights or concerns is non-responsive and if Applicant intends to rely upon such testimony (assuming its admissibility) in Applicant's Notice of Reliance, she must identify the names of those individuals for deposition purposes.

INTERROGATORY NO. 17:

Identify all known instances of actual or perceived confusion, mistake, or deception as to the source of Applicant's goods and services branded under or in connection with the term SURPRISE INSIDE and for each instance, identify all Persons knowledgeable thereof and all documents relating thereto.

RESPONSE TO INTERROGATORY NO. 17:

Objection. This question borders on the ludicrous and absurd. It is readily apparent from the use of such a question in this instance that Opposer's counsel is utilizing canned interrogatories and that the only justification for this opposition is for the purpose of harassing Applicant. Without waiving the objection, Applicant's answer is "no."

Applicant's response is an ambiguous "no." Evidence of actual confusion is powerful evidence of the likelihood of confusion. Applicant must confirm that it is unaware of any instance of false association, confusion, or mistake between Applicant and Intel, or provide examples of such actual confusion.

INTERROGATORY NO. 18:

Identify all markets, channels of distribution and channels of trade in which goods or services branded under or in connection with the term SURPRISE INSIDE will be sold or have been sold, used, displayed, marketed, advertised and promoted.

RESPONSE TO INTERROGATORY NO. 18:

Objection. The question is overly broad and vague, and invites speculation as to what is meant by "channels" of trade and distribution.

This Interrogatory is relevant to determine Applicant's target market, channels of distribution, and channels of trade for her SURPRISE INSIDE branded products. These terms are sufficiently definitive such that Applicant must provide a response. Examples would include "internet, mail order, phone order, retail distribution, wholesale distribution, trade show, etc."

INTERROGATORY NO. 20:

Identify all documents that were sent or otherwise transmitted to Applicant's shareholders, directors, officers, employees, customers, prospective customers, trade organizations, or members of the press, relating to Applicant's use of SURPRISE INSIDE or goods, services branded under or in connection to SURPRISE INSIDE and the above captioned action, Opposition No. 124,223.

RESPONSE TO INTERROGATORY NO. 20:

Applicant is a sole owner of her intellectual property.

This Interrogatory is relevant to determine whether and how Applicant communicates the SURPRISE INSIDE brand to the public or media, whether it is used as part of a phrase, in the manner of a trademark, or with stylization or design elements. Applicant's response addresses an entirely different issue.

INTERROGATORY NO. 22:

Identify examples, as alleged in Paragraph 21 of Applicant's Response to Intel's Notice of Opposition, of third party uses of the phrase "SURPRISE INSIDE" as a trademark.

RESPONSE TO INTERROGATORY NO. 22:

Objection. This information is as easily retrieved by Opposer as by Applicant.

This Interrogatory draws from allegations in Applicant's Answer to Intel's Notice of Opposition, wherein Applicant alleged that certain (unidentified) third parties also used the mark "SURPRISE INSIDE." Applicant cannot hide this information under the guise that it is as easily retrieved by Intel as by Applicant.

As the Board will note, information sought by the above interrogatories is relevant to the issues in this proceeding, and by giving incomplete and evasive, and in some cases, no response, Applicant has avoided her obligations under the Rules.

III. Applicant has Failed to Produce Any Documents in Response to Intel's First Set of Requests for Production of Documents

In written responses to Intel's First Set of Document Requests, Applicant indicated that inspection of the documents would be permitted. (Ghajar Decl. at ¶4, Ex. D). Having made that offer, Applicant never responded to Intel's numerous attempts to retrieve the documents. Specifically, in lieu of traveling from California to Cincinnati, Ohio, Intel's counsel offered to reimburse Applicant for any copy and postage charges incurred in sending copies of such responsive documents to Intel's counsel. (*Id.* at ¶6) Alternatively, Intel offered to have a local courier retrieve, copy, and return the documents to Applicant's counsel. (*Id.*) These attempts were rebuffed by Applicant. It seems apparent that the Applicant clearly has no intention of

providing proper responses to the requested relevant discovery requests without the Board's intervention.

IV. Applicant has Also Failed to Provide Any Responses to the Entirety of Intel's Second Set of Discovery Requests Suspension and Discovery Period

Even more egregious is Applicant's complete disregard, despite multiple reminders, of Intel's Second Set of Interrogatories, Requests for Admission, and Requests for Production of Documents.

Intel served its Second Set of discovery on Applicant's counsel on May 20, 2002. Applicant has not served any objections, responses, or provided any documents in response to this entire set of discovery, which includes Intel's Second Set of Interrogatories Nos. 1 through 11, Requests for Admissions Nos. 1 and 2, and Requests for Production of Documents and Things Nos. 1 through 4. Intel's counsel has sent numerous reminders and requests to Applicant's counsel, all of which remain unanswered. (*Id.* at ¶7) As of the filing of this motion, Applicant has yet to provide any such responses or documents.

V. The Board Should Suspend the Proceeding, then Reset the Discovery and Testimony Periods Pending the Disposition of this Motion

Finally, pursuant to the Board's January 15, 2004 Order, discovery is currently set to close on April 14, 2004. Intel respectfully requests that this case be suspended pending the disposition of this motion, and that the discovery and testimony period dates be reset in their entirety once the proceedings are resumed because of the delay occasioned by Intel's need to draft and file this motion and to allow Opposer to take depositions and follow-up discovery based on Applicant's responses and Document Requests. *See* TBMP §403.04.

CONCLUSION

Applicant has not provided sufficient responses to Intel's First Set of Interrogatories Nos. 8, 11, 16, 17, 18, 20, 22, or any responses to Intel's First Set of Document Requests or its Second Set of Discovery Requests, pursuant to Federal Rules of Civil Procedure 33 and 34 and the Trademark Board Manual of Procedure §407.02 and §409.02. Intel has consistently acted in good faith and has attempted to resolve the discovery issues without resorting to a Motion to Compel. Applicant is flagrantly violating the spirit and the rule of the discovery laws. Without

an order to compel such responses, Opposer's ability to prosecute this proceeding is jeopardized.

Finally, given Applicant's failure to serve *any* responses to Intel's Second Set of discovery requests, Intel further moves the Board to rule that Applicant waived any objections to Intel's Second Set of discovery requests and, moreover, that Intel's Second Set of Requests for Admission are deemed admitted by Applicant.

Respectfully submitted,

INTEL CORPORATION

Date: March 3, 2004

By: _____

Katherine M. Basile

Bobby A. Ghajar

HOWREY SIMON ARNOLD & WHITE, LLP

301 Ravenswood Avenue

Menlo Park, CA 94025

Attorneys for Opposer

INTEL CORPORATION

CERTIFICATE OF EXPRESS MAIL

NUMBER EE358074901US

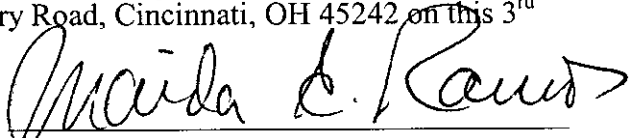
DATE OF DEPOSIT: March 3, 2004

I hereby certify that this paper or fee is being deposited with the United States Postal Service "EXPRESS MAIL POST OFFICE TO ADDRESSEE" service under 37 C.F.R. 1.40 on the date indicated above and is addressed to: Commissioner for Trademarks, Box TTAB NO FEE, 2900 Crystal Drive, Arlington, VA 22202-3513.


Maida E. Ramos

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing "Memorandum of Points and Authorities in Support of Motion to Compel Responses to Intel Corporation's First and Second Sets of Interrogatories, First and Second Sets of Requests for Production and Inspection of Documents and Things, and Second Set of Requests for Admission and to Suspend Proceeding" was served on Counsel for Applicant, Neal O. Willmann, Esq., 9521 Montgomery Road, Cincinnati, OH 45242 on this 3rd day of March, 2004.


Maida E. Ramos

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

INTEL CORPORATION,

Opposer,

vs.

Jacqueline Halliday Diaz,

Applicant.



03-03-2004

U.S. Patent & TMOtr/TM Mail Rcpt Dt. #22

) **DECLARATION OF BOBBY A. GHAJAR**
) **IN SUPPORT OF MOTION TO COMPEL**
) **RESPONSES TO INTEL CORPORATION'S**
) **FIRST AND SECOND SETS OF**
) **INTERROGATORIES, FIRST AND**
) **SECOND SETS OF REQUESTS FOR**
) **PRODUCTION AND INSPECTION OF**
) **DOCUMENTS AND THINGS, SECOND SET**
) **OF REQUESTS FOR ADMISSIONS, AND**
) **TO SUSPEND PROCEEDING**

) Opposition No. 91124223

) Serial No.: 76/135,006

) Published: August 28, 2001

) Opposed Mark: SURPRISE INSIDE

I, Bobby Ghajar, hereby declare that:

1. I am an attorney at the law firm of Howrey Simon Arnold & White, LLP, counsel for Opposer, Intel Corporation. I make this declaration in support of Intel's Motion to Compel Responses to Intel Corporation's First and Second Sets of Interrogatories, First and Second Sets of Requests for Production and Inspection of Documents and Things, Second Set of Requests for Admissions, and to Suspend Proceeding. The following facts are within my personal knowledge and, if called and sworn as a witness, I could and would testify competently thereto.

2. Intel's Opposition against the SURPRISE INSSIDE mark was filed on September 26, 2001. On February 21, 2002 Intel served its First Sets of Interrogatories Nos. 1 through 22, Requests for Production of Documents and Things Nos. 1 through 20 on Applicant's counsel. True and correct copies of said requests are attached hereto as Exhibits A and B.

3. Applicant responded on March 22, 2002 with what Intel viewed as insufficient and incomplete responses to the Interrogatories. True and correct copies of Applicant's Responses to Intel's First Set of Interrogatories attached hereto as Exhibit C.

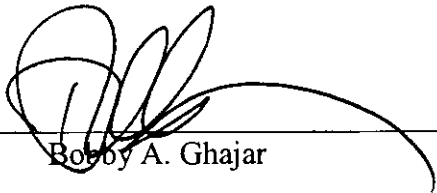
4. On March 22, 2002, Applicant provided written responses to Intel's First Set of Document Requests, but did not produce any documents. A true and correct copy is attached hereto as Exhibit D.

5. On May 20, 2002, Intel served its Second Set of Interrogatories, Requests for Admissions, and Requests for Production of Documents and Things. True and correct copies of said requests are attached hereto as Exhibits E-G. Applicant did not or serve objection to any of Intel's Second Sets of discovery requests.

6. In responses to Intel's First Set of Document Requests, Applicant indicated that inspection of the documents would be permitted. On numerous occasions, in lieu of traveling from California to Cincinnati, Ohio, I offered to reimburse Applicant for any copy and postage charges incurred in sending copies of such responsive documents to Intel's counsel. Alternatively, Intel offered to have a local courier retrieve, copy, and return the documents to Applicant's counsel. These attempts were rebuffed by Applicant.

7. Indeed, to this day, despite multiple reminders and good faith attempts to meet and confer, most recently in early February 2004 (see attached Exhibit H), Applicant still has not produced a single responsive document or provided *any* response or objection to Intel's Second Set of discovery requests. It seems clear that the Board's assistance is needed.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. This declaration was executed in Los Angeles, California, on March 3, 2004.



Bobby A. Ghajar

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

INTEL CORPORATION,

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JACQUELINE HALLIDAY DIAZ,

Applicant.

} INTEL CORPORATION'S FIRST SET OF
} INTERROGATORIES

} Opposition No.: 124,223

} Serial No.: 76/135,006

} Published: August 28, 2001

} Opposed Mark: SURPRISE INSIDE

} Class: 21

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and Section 2.120 of the Rules of Practice in Trademark Cases (C.F.R. §2.120), Opposer, Intel Corporation ("Intel"), hereby propounds the following interrogatories to Applicant, Jacqueline Halliday Diaz. ("Applicant"). These interrogatories are to be answered fully and separately, in writing, and under oath by Applicant or an agent of Applicant authorized to give answers on her behalf. Answers to these interrogatories must be served within the time prescribed by the Federal Rules of Civil Procedure and Rules of Practice in Trademark Cases.

DEFINITIONS AND INSTRUCTIONS

Intel hereby incorporates by reference the definitions and instructions set out in Intel's First Set of Requests for the Production of Documents and Things. In addition, however, if Applicant, pursuant to Federal Rule of Civil Procedure 33(d), opts to produce business records in lieu of a written response to an interrogatory, Applicant must indicate for each business record provided, the number of the interrogatory to which it is responsive.

INTERROGATORIES

INTERROGATORY NO. 1:

Identify all documents, things, events or information that Applicant believes are relevant to the validity or enforceability of her rights to SURPRISE INSIDE against Intel and Intel's INTEL INSIDE Marks, and identify persons knowledgeable thereof.

INTERROGATORY NO. 2:

Identify with particularity each type of good or service promoted, sold, rendered or proposed to be promoted, sold, or rendered by Applicant in connection with the term SURPRISE INSIDE at any time in the United States.

INTERROGATORY NO. 3:

State the earliest date of use in any manner, in any geographic location that Applicant intends to rely upon for priority in this proceeding and describe in detail the circumstances and facts giving rise to such alleged actual or constructive priority rights, specifically including, but not limited to, a description of that mark or designation, the goods and services offered or applied for under that mark or designation on the first use date, and identify Persons knowledgeable thereof and documents relating thereto.

INTERROGATORY NO. 4:

Explain in detail how Applicant conceived, selected, developed, adopted and arrived at the selection of the term SURPRISE INSIDE as a name, term, trade name, corporate name, trademark, or service mark, including the timing of the process, the alternatives considered, and the factors used or considered in selecting the term SURPRISE INSIDE, and identify documents relating thereto and Persons knowledgeable thereof.

INTERROGATORY NO. 5:

Of the Persons identified in Responses to Interrogatory No. 4, identify which of them had knowledge of Intel's INTEL INSIDE Marks or THE COMPUTER INSIDE and THE JOURNEY INSIDE marks prior to the selection of the term SURPRISE INSIDE, state what they knew and how they came to have that knowledge and identify any documents relating thereto.

INTERROGATORY NO. 6:

Identify those Persons having knowledge of, or who participated in, Applicant's decision to apply for federal registration of the term SURPRISE INSIDE by stating their name, last known business and residential address and telephone number.

INTERROGATORY NO. 7:

Of the Persons identified in Responses to Interrogatory No. 6, identify which of them had knowledge of Intel's INTEL INSIDE Marks or THE COMPUTER INSIDE and THE JOURNEY INSIDE marks prior to January 1, 2000, state what they knew and how they came to have that knowledge and identify any documents relating thereto.

INTERROGATORY NO. 8:

For each of Applicant's goods and services branded under or used in connection with the term SURPRISE INSIDE, state, for each year from the date of Applicant's alleged first use in any manner to the present year, the (a) total sales (by units and dollars), (b) total quantity of product (in units and dollars) ordered but not yet shipped, (c) gross and net profits or margins on sales, (d) cost of goods sold, including manufacturing and shipping costs, (e) sales, advertising and marketing expenses, and (f) channels of distribution for goods and services, and identify documents relating thereto and identify Persons knowledgeable thereof.

INTERROGATORY NO. 9:

For each good or service Applicant intends to brand under or use in connection with SURPRISE INSIDE, state the proposed (a) name of the product or service, (b) costs of goods, including manufacturing and shipping costs, (c) advertising and marketing expenses, including commissions, (d) average retail and wholesale costs of each unit, and (e) channels of distribution for the goods and services.

INTERROGATORY NO. 10:

Identify all advertising agencies, consultants, promotional agencies, public relations firms or any other third party whom Applicant has at any time, consulted, employed, retained, or hired in connection with the creation, advertising or promotion in the United States of the term SURPRISE INSIDE.

INTERROGATORY NO. 11:

Identify all advertising and promotional information and materials relating to the term SURPRISE INSIDE including, but not limited to, information and material from any trade show or exhibit, print or electronic publications, radio or television stations, Internet web site or portal, direct mailing list, or other medium in which the advertisement or promotion appeared, and identify all Persons knowledgeable of that advertising and promotional information and materials.

INTERROGATORY NO. 12:

State the date and circumstances surrounding Applicant's first knowledge of Intel's use of each of the INTEL INSIDE Marks upon which Intel premises its Notice of Opposition.

INTERROGATORY NO. 13:

From the earliest date of alleged first use of the term SURPRISE INSIDE to the present, identify and describe in detail each of Applicant's actual uses and proposed or intended uses of the term SURPRISE INSIDE in any manner.

INTERROGATORY NO. 14:

State whether Applicant ever conducted any type of search or investigation relating to the term SURPRISE INSIDE or any other terms concluding with the designation "INSIDE" to determine if those terms were available for use as a name, trade name, trademark, service mark, or use analogous to trademark/service mark use, and identify all documents relating thereto and all Persons with knowledge thereof.

INTERROGATORY NO. 15:

For each search or investigation identified in Interrogatory No. 14 above, state or identify: (a) the date such search or investigation was conducted, (b) the results of such search or investigation, (c) the Person or organization conducting such search or investigation, (d) to whom such search or investigation results were communicated, and (e) all opinions and other documents relating to such search or investigation.

INTERROGATORY NO. 16:

Identify all communications, documents and other facts which evidence, support, or otherwise relate to your contentions that Applicant's mark SURPRISE INSIDE, when used in connection with the goods with which the mark is used, is not likely to cause confusion, mistake, or deception in the trade, or dilution, with Intel's INTEL INSIDE Marks or the marks THE COMPUTER INSIDE or THE JOURNEY INSIDE upon which Intel premises its Notice of Opposition.

INTERROGATORY NO. 17:

Identify all known instances of actual or perceived confusion, mistake, or deception as to the source of Applicant's goods and services branded under or in connection with the term SURPRISE INSIDE and for each instance, identify all Persons knowledgeable thereof and all documents relating thereto.

INTERROGATORY NO. 18:

Identify all markets, channels of distribution and channels of trade in which goods or services branded under or in connection with the term SURPRISE INSIDE will be sold or have been sold, used, displayed, marketed, advertised and promoted.

INTERROGATORY NO. 19:

State whether Applicant or anyone acting on Applicant's behalf has conducted any survey, public opinion poll, marketing study, or other research concerning any matter relating to the issues raised in this proceeding or the term SURPRISE INSIDE and for each survey, poll, study or other research, (a) describe in detail its nature and purpose, (b) describe the manner in which it was conducted, (c) identify all persons knowledgeable or involved, (d) state the dates and locations where it was conducted, (e) list the questions and responses collected, (f) identify all documents relating thereto, and (g) describe in detail the results of each survey, poll, study or other research.

INTERROGATORY NO. 20:

Identify all documents that were sent or otherwise transmitted to Applicant's shareholders, directors, officers, employees, customers, prospective customers, trade organizations, or members of the press, relating to Applicant's use of SURPRISE INSIDE or goods, services branded under or in connection to SURPRISE INSIDE and the above captioned action, Opposition No. 124,223.

INTERROGATORY NO. 21:

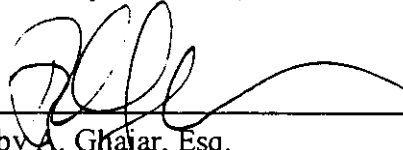
Identify those persons who had more than a clerical role in the answering of the foregoing interrogatories or were involved in any search for documents in connection with said interrogatories and answering Intel's First Set of Interrogatories.

INTERROGATORY NO. 22:

Identify examples, as alleged in Paragraph 21 of Applicant's Response to Intel's Notice of Opposition, of third party uses of the phrase "SURPRISE INSIDE" as a trademark.

DATED: February 21, 2002

Respectfully submitted,



Bobby A. Ghajar, Esq.

Katherine M. Basile, Esq.

HOWREY SIMON ARNOLD & WHITE, LLP

550 South Hope Suite 1400

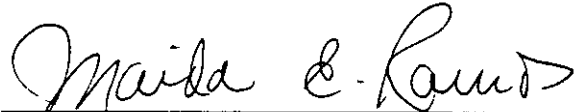
Los Angeles, CA 90071-

(213) 892-1800

Attorneys for Opposer
INTEL CORPORATION

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing INTEL CORPORATION'S FIRST SET OF INTERROGATORIES was mailed by First Class Mail, postage prepaid to Neal O. Willmann, Esq., Phillips Law Firm, Inc., 9521 Montgomery Road, Cincinnati, OH 45242 on this 21st day of February, 2002.



Maida E. Ramos

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

INTEL CORPORATION,

Opposer,

v.

JACQUELINE HALLIDAY DIAZ,

Applicant.

} INTEL CORPORATION'S FIRST SET OF
} REQUESTS FOR PRODUCTION AND
} INSPECTION OF DOCUMENTS AND THINGS
}
} Opposition No.: 124,223
}
} Serial No.: 76/135,006
}
} Published: August 28, 2001
}
} Opposed Mark: SURPRISE INSIDE
}
} Class: 21

Pursuant to Rule 34 of the Federal Rules of Civil Procedure and Section 2.120 of the Trademark Practice Rules (C.F.R. §2.120), Opposer, Intel Corporation ("Intel"), requests that Applicant, Jacqueline Halliday Diaz ("Applicant"), produce the following documents for inspection, thirty days after service of these requests, at the offices of Howrey Simon Arnold & White, LLP, 550 South Hope Street, Suite 1400, Los Angeles, CA 90071, or at such other time and place as the parties may mutually agree upon.

DEFINITIONS

The following definitions shall apply to the document requests that follow:

A. The terms "Applicant," "you," and "your" mean Applicant and any parent company owning all or part of Applicant, subsidiary, subcontractor, any proprietorship, joint venture, partnership or other business cooperation involving Applicant, and the present and former directors, officers, agents, employees, in-house and outside counsel thereof, and other persons under the control of Applicant, regardless of their affiliation or employment.

- B. The terms “Intel” and “Opposer” refer to Intel Corporation.
- C. The term “document,” or its plural, has the same meaning as it does in Fed. R. Civ. P. 34.
- D. The term “application” or its plural refers to trademark applications filed in the Patent and Trademark Office.
- E. The terms “relating to,” “relate to” and “regarding,” include referring to, evidencing, concerning, alluding to, responding to, connected with, commenting on, in respect of, about, explaining, supporting, discussing, showing, describing, reflecting, analyzing, constituting or setting forth.
- F. “Person” shall mean any natural person, corporation, partnership, proprietorship, group, association, organization, business entity, governmental body, agency, and any agent of the foregoing.
- G. “INTEL INSIDE Marks” means trademarks owned by Intel referenced in Intel’s Notice of Opposition dated September 26, 2001.
- H. “SURPRISE INSIDE,” “the phrase SURPRISE INSIDE,” or “SURPRISE INSIDE mark” means the term subject to U.S. Trademark Application, Serial Number 76/135,006 by itself or in combination with other terms or design elements including all combinations, spelling and phonetic variations thereof.
- I. In the following discovery requests, unless the context of the question dictates a broader or different time reference, the questions refer to the time beginning with the earliest date upon which Applicant may attempt to rely for priority purposes in this proceeding with regard to the SURPRISE INSIDE mark, or any variation thereof.
- J. All references in these discovery requests to “commerce” signify commerce that may lawfully be regulated by the United States Congress.
- K. The singular shall be deemed to include the plural and vice versa; the disjunctive (“or”) shall be deemed to include the conjunctive (“and”); and the conjunctive (“and”) shall be deemed to include the disjunctive (“or”).

L. In the following discovery requests, the geographic scope of the requests is limited to the United States.

INSTRUCTIONS

The following instructions apply to the discovery requests below and should be considered as part of each such request:

1. If any information is withheld under a claim of privilege, state the nature of the privilege claimed and provide sufficient information to permit a full determination of whether the claim is valid. For allegedly privileged documents, include: an identification of the sender and the recipients of the document; the date of the document; a description of the contents or nature of the document; the number of the discovery request to which the document is responsive; and a statement of the basis for the asserted claim of privilege.

2. If Applicant objects to any subpart or portion of a request for information or objects to providing certain information requested, state Applicant's objection and answer the unobjectionable subpart(s) of the request for information and/or supply the unobjectionable information requested.

3. If any of the following requests for information cannot be responded to in full after exercising reasonable diligence to secure the information, please so state, supply the information for those portions Applicant is able to answer, and supply whatever information Applicant has concerning the portion which cannot be answered in full. If Applicant's response is qualified in any particular respect, set forth the details of such qualification.

REQUESTS FOR PRODUCTION

REQUEST NO. 1:

Documents identified in Applicant's responses to Intel's First Set of Interrogatories served on Applicant in this proceeding.

REQUEST NO. 2:

Documents relating to or describing in detail any good or service sold or offered by Applicant, at any time, under, or in connection with, the term SURPRISE INSIDE.

REQUEST NO. 3:

Documents relating to Applicant's U.S. Trademark Application, Serial No. 76/135,006, for the term SURPRISE INSIDE, including but not limited to, the file history or file wrapper or correspondence and/or communications – oral, written, or electronic – between Applicant and any third party relating to the trademark application for SURPRISE INSIDE.

REQUEST NO. 4:

Documents relating to any correspondence and/or communications – oral, written, or electronic – between Applicant and any third party regarding any agreement to license the term SURPRISE INSIDE or sell or distribute Applicant's goods or services bearing the term SURPRISE INSIDE.

REQUEST NO. 5:

Documents relating to any application submitted by Applicant or any other person to any state agency or other governmental authority, including the U.S. Patent & Trademark Office, for registration of the term SURPRISE INSIDE as a trade name, corporate name, trademark or service mark.

REQUEST NO. 6:

Documents relating to the date the term SURPRISE INSIDE was first used by or on behalf of Applicant, either alone, or in combination with other terms or designs, in any manner, in connection with any good or service, including use in commerce and use anywhere in the United States.

REQUEST NO. 7:

Documents relating to Applicant's proposed, intended or actual use of the term SURPRISE INSIDE, whether internal or available to public or customers, including, without limitation, business plans, financial estimates, advertising designs and mock ups, marketing memoranda and materials, or advertising materials in the form of any online and/or Internet marketing or advertising, web sites, electronic kiosks, electronic commerce devices, trade shows, sales pitches, customer brochures, direct mail, contests, job fairs, events at any University or school, catalogs, labels, and packaging.

REQUEST NO. 8:

Documents relating to the adoption, conception, selection or selection process of the term SURPRISE INSIDE, or relating to any terms other than SURPRISE INSIDE which Applicant considered adopting during its selection process for the term SURPRISE INSIDE for those goods or services which it currently provides or intends to provide under, or in connection with, SURPRISE INSIDE.

REQUEST NO. 9:

Documents relating to Applicant's idea and decision to use, select, develop the concept of, or adopt the term SURPRISE INSIDE in connection with its goods or services.

REQUEST NO. 10:

Documents relating to the decision to register the term SURPRISE INSIDE in any international class of goods or services with the U.S. Patent and Trademark Office, any state agency or organization, and the decision to use the mark in any manner, including but not limited to, use as a trade name, corporate name, domain name, trademark and/or service mark, or use analogous to trademark/service mark use.

REQUEST NO. 11:

Documents relating to any opinion requested by or received by Applicant relating to Applicant's use or adoption of the term SURPRISE INSIDE, Applicant's right to use or register any marks or designations consisting of or including the term SURPRISE INSIDE, or whether Applicant's use or adoption of the term SURPRISE INSIDE would not infringe upon the rights of any other entity or Person.

REQUEST NO. 12:

All documents relating to any instances of actual or perceived confusion, mistake, or deception as to the source of Applicant's goods or services branded under or in connection with the term SURPRISE INSIDE.

REQUEST NO. 13:

Documents relating to any efforts by Applicant to protect, enforce, monitor or otherwise maintain its alleged rights to the term SURPRISE INSIDE as a trade name, trademark, service mark or any other legal right.

REQUEST NO. 14:

Documents relating to any communication and correspondence -- written, oral or electronic -- between Applicant and Intel.

REQUEST NO. 15:

Financial documents, including but not limited to, invoices, billing documents, or accounting documents, relating to the annual sales or revenues in units and dollars for goods or services provided by Applicant under or in connection with the term SURPRISE INSIDE from the earliest date of Applicant's alleged first use of the term SURPRISE INSIDE in any manner to present.

REQUEST NO. 16:

Documents relating to Applicant's annual advertising, marketing, or promotional costs including, but not limited to, documents related to budgeting and receipts for goods or services sold or proposed to be sold under or in connection with the term SURPRISE INSIDE from the earliest date of Applicant's alleged first use of the term SURPRISE INSIDE to present.

REQUEST NO. 17:

Documents relating to Applicant's customers or the nature of the classes or types of purchasers to whom Applicant markets, including but not limited to, business, institutional, and individual customers or purchasers of any good or service sold under or in connection with the term SURPRISE INSIDE from the earliest date of Applicant's alleged first use of the term SURPRISE INSIDE in any manner to present.

REQUEST NO. 18:

Documents relating to the channels of trade, marketing channels, or distribution in which Applicant has used or intends to use with regard to goods or services associated with, or in connection with, the term SURPRISE INSIDE.

REQUEST NO. 19:

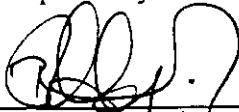
Documents relating to Applicant's document retention policy.

REQUEST NO. 20:

All Documents relating to any communication and correspondence between Applicant and any third party -- written, oral or electronic -- including distributors, regarding Intel's trademarks.

DATED: February 21, 2002

Respectfully submitted,



Bobby A. Ghajar, Esq.

Katherine Basile, Esq.

HOWREY SIMON ARNOLD & WHITE, LLP

550 South Hope Street, Suite 1400

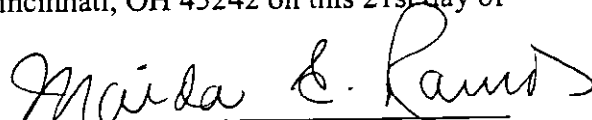
Los Angeles, CA 90071

(213) 892-1840

Attorneys for Opposer
INTEL CORPORATION

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing INTEL CORPORATION'S FIRST SET OF INTERROGATORIES was mailed by First Class Mail, postage prepaid to Neal O. Willmann, Esq., Phillips Law Firm, Inc., 9521 Montgomery Road, Cincinnati, OH 45242 on this 21st day of February, 2002.



Maida E. Ramos

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

INTEL CORPORATION,)	APPLICANT'S ANSWERS TO
	)	INTEL CORPORATION'S FIRST SET
Opposer,	)	OF INTERROGATORIES
)	
v.	)	Opposition No.: 124,223
)	
	)	Serial No.: 76/135,006
JACQUELINE HALLIDAY DIAZ,)	
	)	Published: August 28, 2001
Applicant.)	
	)	Opposed Mark: SURPRISE INSIDE
)	
	)	Class: 21

Applicant hereby objects to any and all Definitions and Instructions offered by Opposer as being beyond the scope of the Rules of Civil Procedure and hereby ignores same.

ANSWERS TO INTERROGATORIES

INTERROGATORY NO. 1: Applicant's pending application for registration of the Mark: SURPRISE INSIDE.

INTERROGATORY NO. 2: Food preparation molds.

INTERROGATORY NO. 3: On January 1, 2000, Applicant initiated an interstate distribution of promotional brochures employing the Mark SURPRISE INSIDE.

INTERROGATORY NO. 4: Applicant conceived, selected and adopted the Mark SURPRISE INSIDE while developing her baking molds and was immediately taken by the appropriateness of the Mark.

INTERROGATORY NO. 5: Applicant had no knowledge of any of Intel's Marks prior to the selection of the Mark SURPRISE INSIDE.

INTERROGATORY NO. 6: No one other than Applicant had knowledge of or participated in Applicant's decision to apply for the registration of the Mark: SURPRISE INSIDE.

INTERROGATORY NO. 7: Applicant had no knowledge of any of Intel's marks prior to January 1, 2000.

INTERROGATORY NO. 8: Objection. A answer to this Interrogatory is not likely to lead to relevant information regarding the Opposition currently being conducted.

INTERROGATORY NO. 9: Objection. Applicant hereby objects to the form and scope of the question.

INTERROGATORY NO. 10: None.

INTERROGATORY NO. 11: Objection. The question is vague, burdensome and overly broad; and, without waiver of the objection, Applicant identifies QVC as a cable television channel which promoted the sale of her cookwares.

INTERROGATORY NO. 12: Applicant became aware of Intel's use of each of the INTEL INSIDE Marks after being served with the Notice of Opposition.

INTERROGATORY NO. 13: Applicant has used, and will continue to use, the Mark SURPRISE INSIDE for the promotion and sale of cookware.

INTERROGATORY NO. 14: No.

INTERROGATORY NO. 15: N/A.

INTERROGATORY NO. 16: In casual conversation with a host of colleagues and contemporaries, Applicant's mere mention of the fact that her application for registration is being opposed by Intel elicits exclamations and grimaces of disbelief

accompanied by gratuitous comments of “how can they (Intel) be so predatory and arrogant?” and “isn’t it illegal to usurp the word ‘inside’ from the English language?”

INTERROGATORY NO. 17: Objection. This question borders on the ludicrous and absurd. It is readily apparent from the use of such a question in this instance that Opposer’s counsel is utilizing canned interrogatories and that the only justification for this opposition is for the purpose of harassing Applicant. Without waiving the objection, Applicant’s answer is “no.”

INTERROGATORY NO. 18: Objection. The question is overly broad and vague, and invites speculation as to what is meant by “channels” of trade and distribution.

INTERROGATORY NO. 19: No.

INTERROGATORY NO. 20: Applicant is a sole owner of her intellectual property.

INTERROGATORY NO. 21: Applicant, and with regard to the objections, Applicant’s Counsel.

INTERROGATORY NO. 22: Objection. This information is as easily retrieved by Opposer as by Applicant.

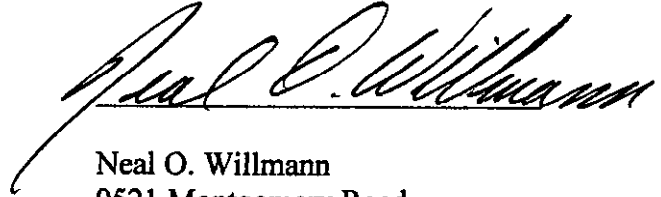
As to all Answers:


Jacqueline Halliday Diaz

As to all Objections:


Neal O. Willmann

Respectfully submitted,

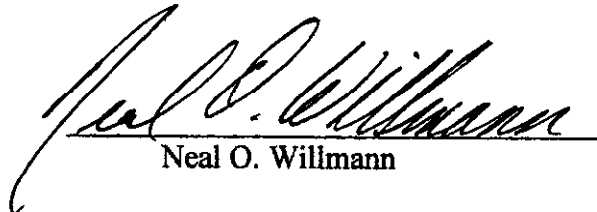


Neal O. Willmann
9521 Montgomery Road
Cincinnati, OH 45242
(513) 985-2500

Attorney for Applicant
JACQUELINE HALLIDAY DIAZ

CERTIFICATE OF SERVICE

This is to certify that a copy of Applicant's ANSWERS IN RESPONSE TO INTEL CORPORATION'S FIRST SET OF INTERROGATORIES was mailed by First Class Mail, postage paid, to Bobby A. Ghajar, Esq., Howrey Simon Arnold & White, LLP, 550 South Hope Street, Suite 1400, Los Angeles, CA 90017 on this 22nd day of March, 2002.



Neal O. Willmann

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

INTEL CORPORATION,) APPLICANT'S RESPONSE TO
		) INTEL CORPORATION'S FIRST SET
Opposer,		) OF REQUESTS FOR PRODUCTION
		) AND INSPECTION OF DOCUMENTS
		) AND THINGS
)
v.		) Opposition No.: 124,223
)
		) Serial No.: 76/135,006
JACQUELINE HALLIDAY DIAZ,)
		) Published: August 28, 2001
Applicant.)
		) Opposed Mark: SURPRISE INSIDE
)
		) Class: 21

Applicant objects to any and all of Opposer's Instructions as being beyond the scope of the Rules of Civil Procedure and hereby ignores same.

REQUEST NO. 1: All documents, if any, to be produced in response to this Request are available for inspection at the Phillips Law Firm, 9521 Montgomery Road, Cincinnati, OH 45242, at a time reasonably convenient to both parties.

REQUEST NO. 2. All documents, if any, to be produced in response to this Request are available for inspection at the Phillips Law Firm, 9521 Montgomery Road, Cincinnati, OH 45242, at a time reasonably convenient to both parties.

REQUEST NO. 3: All documents, if any, to be produced in response to this Request are available for inspection at the Phillips Law Firm, 9521 Montgomery Road, Cincinnati, OH 45242, at a time reasonably convenient to both parties.

REQUEST NO. 4: All documents, if any, to be produced in response to this Request are available for inspection at the Phillips Law Firm, 9521 Montgomery Road, Cincinnati, OH 45242, at a time reasonably convenient to both parties.

REQUEST NO. 5: All documents, if any, to be produced in response to this Request are available for inspection at the Phillips Law Firm, 9521 Montgomery Road, Cincinnati, OH 45242, at a time reasonably convenient to both parties.

REQUEST NO. 6: : All documents, if any, to be produced in response to this Request are available for inspection at the Phillips Law Firm, 9521 Montgomery Road, Cincinnati, OH 45242, at a time reasonably convenient to both parties.

REQUEST NO. 7: All documents, if any, to be produced in response to this Request are available for inspection at the Phillips Law Firm, 9521 Montgomery Road, Cincinnati, OH 45242, at a time reasonably convenient to both parties.

REQUEST NO. 8: All documents, if any, to be produced in response to this request are available for inspection at the Phillips Law Firm, 9521 Montgomery Road, Cincinnati, OH 45242, at a time reasonably convenient to both parties.

REQUEST NO. 9: All documents, if any, to be produced in response to this request are available for inspection at the Phillips Law Firm, 9521 Montgomery Road, Cincinnati, OH 45242, at a time reasonably convenient to both parties.

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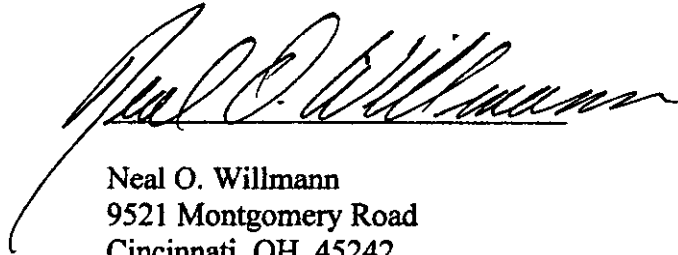
REQUEST NO. 18: All documents, if any, to be produced in response to this request are available for inspection at the Phillips Law Firm, 9521 Montgomery Road, Cincinnati, OH 45242, at a time reasonably convenient to both parties.

REQUEST NO. 19: All documents, if any, to be produced in response to this request are available for inspection at the Phillips Law Firm, 9521 Montgomery Road, Cincinnati, OH 45242, at a time reasonably convenient to both parties.

REQUEST NO. 20: All documents, if any, to be produced in response to this request are available for inspection at the Phillips Law Firm, 9521 Montgomery Road, Cincinnati, OH 45242, at a time reasonably convenient to both parties.

DATED: March 21, 2002

Respectfully submitted,

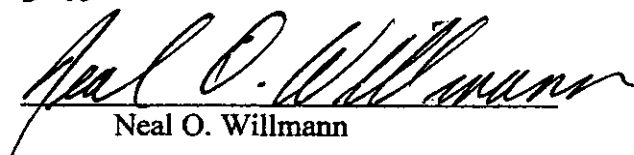


Neal O. Willmann
9521 Montgomery Road
Cincinnati, OH 45242
513) 985-2500

Attorney for Applicant
JACQUELINE HALLIDAY DIAZ

CERTIFICATE OF SERVICE

This is to certify that a copy of Applicant's RESPONSES TO INTEL CORPORATION'S FIRST SET OF REQUESTS FOR PRODUCTION AND INSPECTION OF DOCUMENTS was mailed by First Class Mail, postage paid, to Bobby A. Ghajar, Esq., Howrey Simon Arnold & White, LLP, 550 South Hope Street, Suite 1400, Los Angeles, CA 90017 on this 22nd day of March, 2002.



Neal O. Willmann

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

INTEL CORPORATION,

Opposer,

v.

JACQUELINE HALLIDAY DIAZ,

Applicant.

} INTEL CORPORATION'S SECOND SET OF
} INTERROGATORIES

} Opposition No.: 124,223

} Serial No.: 76/135,006

} Published: August 28, 2001

} Opposed Mark: SURPRISE INSIDE

} Class: 21

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and Section 2.120 of the Rules of Practice in Trademark Cases (C.F.R. §2.120), Opposer, Intel Corporation ("Intel"), hereby propounds the following interrogatories to Applicant, Jacqueline Halliday Diaz. ("Applicant"). These interrogatories are to be answered fully and separately, in writing, and under oath by Applicant or an agent of Applicant authorized to give answers on her behalf. Answers to these interrogatories must be served within the time prescribed by the Federal Rules of Civil Procedure and Rules of Practice in Trademark Cases.

DEFINITIONS AND INSTRUCTIONS

Intel hereby incorporates by reference the definitions and instructions set out in Intel's First Set of Requests for the Production of Documents and Things. In addition, however, if Applicant, pursuant to Federal Rule of Civil Procedure 33(d), opts to produce business records in lieu of a written response to an interrogatory, Applicant must indicate for each business record provided, the number of the interrogatory to which it is responsive.

INTERROGATORIES

INTERROGATORY NO. 1:

State whether Applicant operates, owns, or uses a computer and indicate the date of such use and the type of computer used by Applicant.

INTERROGATORY NO. 2:

Identify the names, addresses and other contact information of those individuals identified in Applicant's Response to Interrogatory No. 16.

INTERROGATORY NO. 3:

Describe whether Applicant's products may be purchased through the internet.

INTERROGATORY NO. 4:

State with particularity the reasons for your response to Applicant's Request for Admission No. 9.

INTERROGATORY NO.5:

State with particularity the reasons supporting your response to Applicant's Request for Admission No. 17.

INTERROGATORY NO. 6:

Describe in detail how consumers come to purchase Applicant's products bearing the term SURPRISE INSIDE.

INTERROGATORY NO. 7:

Describe in detail the basis for your response to Opposer's Request for Admission No. 23.

INTERROGATORY NO. 8:

State whether Applicant has a business relationship with any third party relating to products on which the term SURPRISE INSIDE appears, and identify those third parties and the nature or purpose of Applicant's relationship with each identified third party.

INTERROGATORY NO. 9:

Identify whether any third party such as QVC, Inc. currently derives or derived royalties or commissions from sales of Applicant's products bearing the term SURPRISE INSIDE.

INTERROGATORY NO. 10:

State whether Applicant operates a website, and if so, provide the domain name at which the website can be found, and identify who registered the domain name and created the website for Applicant.

INTERROGATORY NO. 11:

State whether Applicant maintains a personal or business-related e-mail address.

DATED: May 20, 2002

Respectfully submitted,



Bobby A. Ghajar, Esq.

Katherine M. Basile, Esq.

HOWREY SIMON ARNOLD & WHITE, LLP

550 South Hope Suite 1400

Los Angeles, CA 90071-

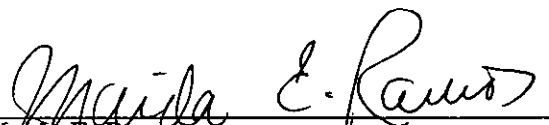
(213) 892-1800

Attorneys for Opposer

INTEL CORPORATION

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing INTEL CORPORATION'S SECOND SET OF INTERROGATORIES was mailed by First Class Mail, postage prepaid to Neal O. Willmann, Esq., Phillips Law Firm, Inc., 9521 Montgomery Road, Cincinnati, OH 45242 on this 28th day of May, 2002.


Maida E. Ramos

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

INTEL CORPORATION,

Opposer,

v.

JACQUELINE HALLIDAY DIAZ,

Applicant.

} INTEL CORPORATION'S SECOND SET OF
} REQUESTS FOR PRODUCTION AND
} INSPECTION OF DOCUMENTS AND THINGS

} Opposition No.: 124,223

} Serial No.: 76/135,006

} Published: August 28, 2001

} Opposed Mark: SURPRISE INSIDE

} Class: 21

Pursuant to Rule 34 of the Federal Rules of Civil Procedure and Section 2.120 of the Trademark Practice Rules (C.F.R. §2.120), Opposer, Intel Corporation ("Intel"), requests that Applicant, Jacqueline Halliday Diaz ("Applicant"), produce the following documents for inspection, thirty days after service of these requests, at the offices of Howrey Simon Arnold & White, LLP, 550 South Hope Street, Suite 1400, Los Angeles, CA 90071, or at such other time and place as the parties may mutually agree upon.

DEFINITIONS AND INSTRUCTIONS

For purposes of these requests, the Definitions and Instructions set forth in Opposer's First Set of Requests for Production and Inspection of Documents and Things are to be applied.

REQUESTS FOR PRODUCTION

REQUEST NO. 1:

Documents relating to Applicant's purchase of a personal computer or computers.

REQUEST NO. 2:

Documents relating to Applicant's relationship with QVC, Inc.

REQUEST NO. 3:

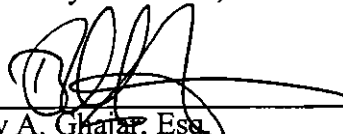
Documents relating to the creation of Applicant's website.

REQUEST NO. 4:

Documents relating to Applicant's relationship with its internet service provider.

DATED: May 20, 2002

Respectfully submitted,



Bobby A. Ghajar, Esq.

Katherine Basile, Esq.

HOWREY SIMON ARNOLD & WHITE, LLP

550 South Hope Street, Suite 1400

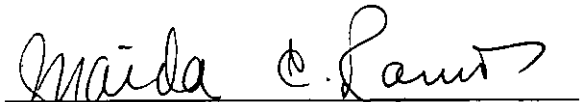
Los Angeles, CA 90071

(213) 892-1840

Attorneys for Opposer
INTEL CORPORATION

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing INTEL CORPORATION'S SECOND SET OF INTERROGATORIES was mailed by First Class Mail, postage prepaid to Neal O. Willmann, Esq., Phillips Law Firm, Inc., 9521 Montgomery Road, Cincinnati, OH 45242 on this 20th day of May, 2002.


Maida E. Ramos

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

INTEL CORPORATION,

Opposer,

v.

JACQUELINE HALLIDAY DIAZ,

Applicant.

INTEL CORPORATION'S SECOND SET
OF REQUESTS FOR ADMISSIONS

Opposition No.: 124,223

Serial No.: 76,135,006

Published.: August 28, 2001

Opposed Mark: SURPRISE INSIDE

Class: 21

Opposer, Intel Corporation ("Opposer"), by and through its attorneys, pursuant to Rule 36, Fed. R. Civ. P., and Rules 2.116 and 2.120 of the Trademark Rules of Practice, requests that Applicant, Jacqueline Halliday Diaz ("Applicant") make the following admissions within (30) days of service of these Requests for Admission.

DEFINITIONS AND INSTRUCTIONS

For purposes of these requests, the definitions set forth in Opposer's First Set of Requests for Production and Inspection of Documents and Things are to be applied.

REQUESTS FOR ADMISSIONS

REQUEST FOR ADMISSION NO. 1:

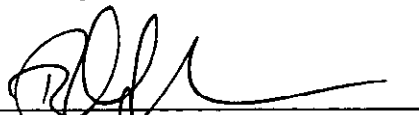
Admit that people who purchase Applicant's products are likely familiar with the INTEL INSIDE mark, as defined in Opposer's Notice of Opposition.

REQUEST FOR ADMISSION NO. 2:

Admit that you use a computer in connection with your business.

DATED: May 20, 2002

Respectfully submitted,



Bobby A. Ghajar

Katherine M. Basile

HOWREY SIMON ARNOLD & WHITE, LLP

550 South Hope Street, Suite 1400

Los Angeles, CA 90071

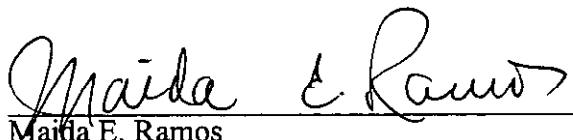
(213) 892-1800

Attorneys for Opposer

INTEL CORPORATION

CERTIFICATE OF SERVICE

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Maida E. Ramos



550 SOUTH HOPE STREET
SUITE 1400
LOS ANGELES, CA 90071-2627
PHONE 213.892.1800
FAX 213.892.2300
A LIMITED LIABILITY PARTNERSHIP

WRITER'S DIRECT DIAL:
213.892.1840
GHAJAR@HOWREY.COM

February 6, 2004

FILE: 11357.0591.00US00

CONFIDENTIAL

**CERTIFIED MAIL - RETURN
RECEIPT REQUESTED**

Neal O. Willmann, Esq.
Phillips Law Firm, Inc.
9521 Montgomery Road
Cincinnati, OH 45242

RE: *Trademark Opposition No. 124223*
Intel v. Ms. Diaz
Mark: SURPRISE INSIDE

Dear Neal:

Before the New Year, and in early January, we have exchanged several emails about the status of this case, your client's outstanding discovery responses, and your role as Ms. Diaz's counsel. Because you confirmed that, at present, you are Ms. Diaz's attorney, I am directing this letter to you pursuant to Rule 2.120 of the Trademark rules of Practice in an attempt to meet and confer on discovery issues that have been dormant for much of 2003.

As you will recall, in February 2002, Intel served Ms. Diaz with First Sets of Interrogatories, Requests for Production of Documents, and Requests for Admissions. Although you responded to Intel's discovery with inappropriately terse responses to Intel's Interrogatories and Requests for Admissions, you did not produce any documents in response to Intel's document requests. Subsequent attempts to obtain these documents were unsuccessful, and to date, we have yet to receive any documents responsive to Intel's February 21, 2002 document requests. Intel is entitled to receive these documents immediately, and requests that Ms. Diaz produce the documents before Friday, February 13, 2004. If you will not agree to copy such documents and send them to us, let me know and I will have a local copy service pick up the documents for reproduction at a time convenient for you.

Further, on May 20, 2002, Intel served your client with Second Sets of Interrogatories, Requests for Admissions, and Requests for Production of Documents. Over a year and a half later and in spite of many reminders, your client has failed to serve any objections (thereby waiving any objections she may have had) or responses to Intel's second set of discovery requests. At no time did Intel provide Ms. Diaz with an extension of time to respond to the discovery requests; now that the suspension in the matter has been lifted, discovery must proceed apace.

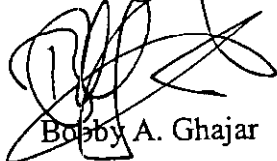
Neal O. Willmann, Esq.
February 6, 2004
Page 2

Accordingly, we seek to meet and confer on the foregoing discovery issues by Thursday, February 19, 2004. Please provide me with your availability for such a call. If you do not intend to make yourself available, we need to know right away so that we can promptly seek appropriate redress with the Trademark Trial and Appeal Board.

REDACTED

I look forward to hearing from in regards to our request to meet and confer and, if appropriate, to reinitiate negotiations regarding the possibility of settlement.

With regards,



Bobby A. Ghajar

cc: Irene Chong, Intel Corporation



ttab
550 SOUTH HOPE STREET
SUITE 1400
LOS ANGELES, CA 90071-2627
PHONE 213.892.1800
FAX 213.892.2300
A LIMITED LIABILITY PARTNERSHIP
WRITER'S DIRECT DIAL:
(213) 892-1840
ghajarb@howrey.com

File No. 11357.0591.00US00

March 3, 2004

Via Express Mail EE358074901US

Commissioner for Trademarks
Box TTAB NO FEE
2900 Crystal Drive
Arlington, Virginia 22202-3513

CERTIFICATE OF EXPRESS MAILING
NUMBER: EE358074901US
DATE OF DEPOSIT: March 3, 2004
I hereby certify that this paper or fee is being deposited with the United States Postal Service, U.S. First Class Mail, under 37 C.F.R. § 1.8, on the date indicated above, and is addressed to the Commissioner for Trademarks, Box TTAB NO FEE, 2900 Crystal Drive, Arlington, VA 22202-3513.
<i>Maida E. Ramos</i> Maida E. Ramos

Re: *Motion to Compel Responses to Intel Corporation's Discovery*
Mark: SURPRISE INSIDE
Serial No.: 76/135,006; Opposition No.: 124,223



Dear Madam:

03-03-2004

U.S. Patent & TMO/TM Mail Rcpt Dt. #22

Enclosed for filing are:

1. This letter (in duplicate),
2. Notice of Motion and Motion to Compel Responses to Intel Corporation's First and Second Sets of Interrogatories, First and Second Sets of Requests for Production and Inspection of Documents and Things, and Second Set of Requests for Admissions, and to Suspend Proceeding;
3. Memorandum of Points and Authorities in Support of Motion to Compel Responses to Intel Corporation's First and Second Sets of Interrogatories, First and Second Sets of Requests for Production and Inspection of Documents and Things, and Second Set of Requests for Admissions, and to Suspend Proceeding;
4. Declaration of Bobby A. Ghajar in Support of Motion to Compel Responses to Intel Corporation's First and Second Sets of Interrogatories, First and Second Sets of Requests for Production and Inspection of Documents and Things, and Second Set of Requests for Admissions, and to Suspend Proceeding; and
5. A self-addressed stamped postcard to evidence receipt of this request.

Please return the enclosed postcard to evidence receipt of the above-referenced documents.

Very truly yours,

Bobby A. Ghajar
Bobby A. Ghajar

Enclosures

cc: Michele Huntzinger

TAB

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

SUNSHINE MILLS, INC.,

Opposer,

v.

NURTURE, INC.,

Applicant

)
)
)
)
)
)
)

Opposition No. 91158910

Application Serial No. 76/399153



POWER OF ATTORNEY

03-04-2004

U.S. Patent & TMO/TM Mail Rcpt Dt. #66

Opposer, Sunshine Mills, Inc., appoints Conrad C. Pitts, a member of the law firm of Pitts, Trousdale & Eckl, P.C., a member of the bar of Alabama and Florida, and George P. Kobler, a member of the law firm of Lanier Ford Shaver & Payne P.C., a member of the bar of Alabama, to prosecute this opposition proceeding and to transact all business in and before the United States Patent and Trademark Office in connection herewith.

Please address all correspondence to:

Conrad C. Pitts
Pitts, Trousdale & Eckle, P.C.
401 E. Tuscaloosa Street
P.O. Box 1436
Florence, AL 35630

and to

George P. Kobler
Lanier Ford Shaver & Payne P.C.
200 West Side Square, Suite 5000
P. O. Box 2087
Huntsville, AL 35801.

Sunshine Mills, Inc.

By Alan Bostick
Alan Bostick

Its: President

Date: 2/13/04

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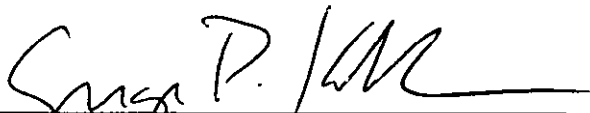
P.O. Box 676

Red Bay, AL 35582

Telephone: 256-356-9541

Certificate of First-Class Mailing (37 CFR 1.8)

I hereby certify that the attached correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513, on this 1 day of March, 2004.



George P. Kobler, Esq.


CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served on the following counsel:

ATTORNEYS FOR APPLICANT:

Stacey R. Halpern
Knobbe Martens Olson & Bear LLP
2040 Main Street, 14th Floor
Irvine, CA 92614

by mailing same, first class postage prepaid, on this the 1st day of March, 2004.



Off Counsel